IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3309 of 2001
And
Writ Petition No.3913 of 2001

Writ Petition No.3309 of 2001

United Church of Northern India Trust
Association, through its Secretary. ...Petitioner

Versus

The State of Maharashtra and ors. ...Respondents

Writ Petition No.3913 of 2001

Christian Property Bachao Manch
and ors. ...Petitioners

Versus

The State of Maharashtra and ors. ...Respondents

Coram : R.C. Chavan, J.

Date of Reserving the Order : 18-12-2006

Date of Pronouncing the Order : 10-1-2007

ORDER :

1. The petitioners in these two petitions take exception to the order passed by the learned Charity Commissioner on 18-4-2001, whereby he granted permission to the United Church of Northern India Trust Association (for short, hereinafter referred to as "UCNITA") through its trustee Rev. Dr. T.M. Joseph, (arrayed as respondent No.3 in Writ Petition No.3309 of 2001 and respondent No.4 in Writ Petition No.3913 of 2001), to lease or develop properties situated in City Survey Nos.1673 and 1646 of Mouza Sitabuldi, popularly known as properties where St. Ursula Girls High School and Gardiner High School are situated.

2. The petitioner in Writ Petition No.3309 of 2001 also describes itself as UCNITA through its Secretary Shri Veersen Stephen Barse. The petitioners in Writ Petition No.3913 of 2001 are Christian Property Bachao Manch and its members.

3. Rev. Dr. T.M. Joseph, trustee of UCNITA, applied to the Charity Commissioner for permission to lease and develop properties

where St. Ursula Girls High School and Gardiner High School are situated. The Trust had floated tenders and after considering the offers, sought to accept the offers of M/s. Gaugam Rolling Mills Private Limited and M/s. Abhishek Steel Limited respectively for development of the two properties. The application for permission before the Charity Commissioner was opposed by the petitioners. The petitioners contend that 22 change reports in respect of management of the Trust were pending and till disposal of the change reports, the application may not be decided. According to the petitioners, the Charity Commissioner was 'aggressive' in deciding the application, did not consider all the aspects of the matter and allowed the application filed by Rev. Dr. T.M. Joseph, as trustee of UCNITA. The petitioners contend that the order is arbitrary, illegal, etc., and granting permission to develop the property of St. Ursula Girls High School into a residential and commercial complex would pose danger to the modesty, safety and security of the girl-students staying in the School hostel.

4. On behalf of UCNITA, Rev. Dr. T.M. Joseph had filed an affidavit-in-reply contending that the petitioner in Writ Petition No. 3309 of 2001, through its Secretary Shri Veersen Stephen Barse, has nothing to do with UCNITA and is not its Secretary. He gave the

history of formation of UCNITA and Church of North India and stated that United Church of Northern India ceased to exist from 19-11-1970 from which date Church of North India came into existence and has been held to be the successor of United Church of Northern India by judgment dated 16-9-1985 by the Deputy Charity Commissioner, which was affirmed in appeal by the Charity Commissioner on 19-1-1990.

5. The question of succession had also been considered in Writ Petition No.625 of 1985, where too, by judgment dated 4-12-1985, this Court had held that Church of North India had come into existence. A company appeal had also been filed against UCNITA bearing No.3 of 1997 against the judgment of the Company Law Board, which had confirmed alteration of memorandum of association of UCNITA. This appeal was held untenable, since the appellants therein were held to have lost their right to be the members of the respondent-Company. This judgment dated 3-7-1998 was challenged before a Division Bench of this Court, and the Bench, by its judgment dated 19-1-1999, dismissed the said appeal. The Division Bench had duly considered the question of formation of Church of North India and had also taken a note of judgment of this Court in Writ Petition No.625 of 1985. The

Division Bench had also held that the appellants, who claimed to represent United Church of North India had no locus whatsoever, since United Church of North India had lost its independent identity and had merged in Church of North India and upon such merger, the deletion of reference to United Church of North India in the memorandum of association of UCNITA and its substitution by Church of North India was upheld. In effect, the Court held that entity by name United Church of North India has nothing to do with UCNITA. Therefore, according to respondent Rev. Dr. T.M. Joseph, representing UCNITA, the petitioner in Writ Petition No.3309 of 2001 has no locus. His claim to have been Secretary has been rejected by the Deputy Charity Commissioner by his order on 20-2-2001 on a change report. The petitioners in other petition also are not persons interested and, therefore, have no locus.

6. According to Rev. Dr. T.M. Joseph, the development is proposed to be carried out on a small portion and would not affect the activities of the School but would rather create additional facilities and provide funds for repairs, renewal of dilapidated structures. The respondents, therefore, prayed for dismissal of the petitions.

7. By consent, the petitions were taken up for final hearing at

the stage of admission. Hereinafter reference to petitioners would mean reference to persons objecting to the Charity Commissioner's order and reference to respondents would be to UCNITA represented by Rev. Dr. T.M. Joseph.

8. Shri P.N. Chandurkar, the learned Senior Counsel for the petitioners, submitted that the petitions are in the nature of protecting public interest. He submitted that the petitioners have no personal gain to achieve and only want to stop mismanagement of the church properties. He submitted that Shri Barse is the Secretary of the petitioner Association and the proceedings in respect of change reports are still pending before various authorities. Therefore, according to the learned Senior Counsel, the Charity Commissioner should not have hastily disposed of the application for permission to develop the properties filed on behalf of one section of trustees without first deciding as to who is entitled to administer the Trust.

9. The learned Senior Counsel for the petitioners dealt with the scope of enquiry by the Charity Commissioner under Section 36 of the Bombay Public Trust Act. For this purpose, he relied on the judgments in Suburban Education Society, Mumbai and another v. Charity Commissioner of Maharashtra State, Mumbai and others, reported in

2004(2) Mh.L.J. 792, and Ghanshyam V. Kukreja v. M/s. Bhagnari Panchayat Trust & Ors., reported in 2005(1) ALL MR 308. I have carefully considered the observations of this Court in the two decisions. It may be useful to reproduce the observations of this Court in paras 12 and 13 of the judgment in Suburban Education Society, Mumbai and another v. Charity Commissioner of Maharashtra State, Mumbai and others in order to comprehend the scope of enquiry under Section 36 of the Bombay Public Trust Act, which read as under :

> *"12. From the perusal of the above section, it is clear that the Charity Commissioner is empowered to scrutinize any application for sale or transfer of the immovable property which is owned by the Trust in order to ensure that the property is being sold for an adequate consideration and that the money is going to be utilised for fulfilling the aims and objects of the Trust and is not likely to be frittered away by the Trustees. The Apex Court as also this Court has time and again held that the Charity Commissioner should consider the need of the Trust and grant permission wherever the property of the Trust is being sold after following proper procedure so that the market value of the said property is received by the Trust.*
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> *13. The Division Bench of this Court in the case of*

Madhukar Sunderlal Sheth and others vs. S.K. Laul and others reported in 1993 Mh.L.J. 1107 (the Judgment delivered by Mrs. Sujata Manohar, J. as she then was) has observed in paragraph No.5 as under:--

> *"5. The Charity Commissioner, under the Bombay Public Trust Act is required to give his sanction bearing in mind the interest, benefit and protection of the trust. He has to apply his mind, inter alia, to the price at which the property is to be sold under the agreement. The Charity Commissioner has the power, in a given case, to come to the conclusion that the price at which the trustees have agreed to sell the property is not the price which would secure adequate benefit to the trust and he may reject the agreement on that ground. Even the terms of the agreement of sale which the trustees may have entered into, are liable to be examined by the Charity Commissioner at the time when he grants his sanction. Approval by the Charity Commissioner ensures reasonableness of the agreement of sale. These factors will also have to be borne in mind by the Income Tax Authorities while exercising their power under section 269UD. The discretionary power under that section cannot be exercised arbitrarily. It will have to be exercised bearing in mind the purpose for which it is conferred. Hence the submission of the petitioner that if there is delay on the part of the Charity Commissioner in*

granting sanction, and there is a rise in the property market, the purchaser of such a property will be at a disadvantage, loses its force. The question of consideration has to be considered by the income-tax authorities in the context of the special circumstances which accompany a sale by a public trust. The purchaser can also apply in accordance with law for an early sanction by the Charity Commissioner."

Similarly, the learned Single Judge of this Court (Shri S.P. Barucha, J., as he then was) in the case of Arunodaya Prefab vs. M.D. Kambli and others, reported in 1979 Mh.L.J. 104 in paragraph No.22 of the Judgment has laid down what is the duty of the Charity Commissioner when an application is made under section 36. The Paragraph No.22 reads as under :

"22. Before parting with this case, I would add this note of caution. If the Charity Commissioner directs trustees to invite offers for sale of trust property in respect whereof the trustees have already entered into an agreement for sale and applied for sanction thereof, there are bound to be difficulties of the sort which have occurred in this petition. If the Charity Commissioner is inclined to direct the trustees to invite offers for the sale of trust property, he must first ascertain that the trustees would be willing to sell the property to one of these offers. Where an agreement for sale has been

arrived at and is sent up for sanction, the Charity Commissioner must satisfy himself of the adequacy of the price offered upon the basis of instance of sale in the locality or upon an architects report or upon some similar basis."

10. In Bhanshyam V. Kukreja v. M/s. Bhagnari Panchayat Trust & Ors., this Court had categorically observed that it was not open to the Charity Commissioner to require the trustees to sell or lease the trust land to any person other than the one selected by the trustees. Jurisdiction of the Charity Commissioner was only either to grant or decline to grant the permission for the reasons recorded. The Court observed that if the trustees do not have confidence in other bidders, they cannot be compelled by the Charity Commissioner to accept the offer of other bidders.

11. Bearing in mind this scope of the enquiry under Section 36 of the Bombay Public Trust Act, it would be necessary to approach the question of petitioners' locus, which has been dealt with by the Charity Commissioner in his impugned order. The learned Senior Counsel for the petitioners submitted that these petitions are in the nature of public interest litigation and, therefore, sought to place reliance on the

judgment of the Supreme Court in The Janata Dal v. H.S. Chowdhary and others (Bofors case), reported in AIR 1993 SC 892, about the scope of public interest litigation and the rule of locus standi. The Janata Dal had filed the special leave petition as their prayer for intervention was not granted by the High Court which was considering the criminal revision by one S.H. Chowdhary, who too was held to have no locus by the Special Judge. The High Court took suo motu cognizance and issued show cause notice to CBI as to why the proceedings in the Special Judge's Court should not be quashed. While setting aside the order passed by the High Court registering suo motu proceedings, the Supreme Court held that neither S.H. Chowdhary nor the Janata Dal had a standing. The observations of the Court in paras 60, 61, 62, 87, 96 and 107 of the judgment may be usefully reproduced, which are as under :

> *"60. Be that as it may, it needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."*

"61. ... In a private action, the litigation is bipolar; two opposed parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action."

"62. In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial machinery in motion like actio popularis of Roman Law whereby any citizen could bring such an action in respect of a public delict."

After considering several judgments, the Court went on to observe :

"87. From the above pronouncements, it emerges that this summit Court has widely enlarged the scope of PIL by

relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also entertaining Writ Petitions filed under Art.32 of the Constitution by public spirited and policy oriented activist persons or journalists or of any organisation. ...

... The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other part of the world."

"96. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

"107. It is thus clear that only a person activing bona fide and having sufficient interest in the proceedings of PIL will alone have a locus standi and can approach the

Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold."

12. The learned Senior Counsel for the petitioners had also placed reliance on a Full Bench judgment of High Court of Andhra Pradesh in Andhra Pradesh Scheduled Tribes Employees' Association v. Aditya Pratap Bhanj Dev and others, reported in 2002 LAB. I.C. 3477. The question involved in that case was of standing of association of Scheduled Tribes to challenge appointment of a District Judge, who had claimed the benefit of belonging to Scheduled Tribe. The Court held that the case involved public interest and hence the association of Scheduled Tribes had a standing to challenge the appointment. The learned Senior Counsel for the petitioners submitted that the petitioners in the present case stand on a similar footing, since they merely want that the interest of the beneficiaries, who are members of the Church, should be protected and the properties in question should not be permitted to be used for the

purposes other than those for which the Trust was created.

13. His learned adversary, Shri S.P. Dharmadhikari, submitted that as of date, Shri Barse is not recognised as the Secretary of the Trust. He submitted that disgruntled souls would go on filing various proceedings and simply because such proceedings take time for being disposed of, it would not be open for the petitioners to contend that there should be no development on the properties. He submitted that the whole claim of Shri Barse flows from his adherence to United Church of North India, which has ceased to exist. This question has already been decided by this Court in Writ Petition No.625 of 1985 and also by the Company Judge and by the Division Bench while disposing of appeal from the judgment of the Company Judge, which have been incorporated in the affidavit-in-reply filed on behalf of the respondent. Copies of these judgments have been filed on record and they clearly show that United Church of North India, through which the petitioner claims to be associated with UCNITA, has nothing to do with the affairs of UCNITA in view of the amendments to the memorandum of association of UCNITA.

14. The learned Senior Counsel for the petitioners submitted that the fact that United Church of North India still exists could be seen

from a souvenir of United Church of North India brought out in the year 2000. A souvenir cannot displace the conclusions drawn in judgments which have been referred to in affidavit-in-reply filed by Rev. Dr. T.M. Thomas. The judgments in Writ Petition No.625 of 1985 dated 4-12-1989, Company Appeal No.3 of 1997 dated 3-7-1998, and Appeal No.1211 of 1998 arising out of Company Appeal No.3 of 1997 dated 19-1-1999, all show that United Church of North India, which has ceased to exist, has nothing to do with UCNITA. Even if adherents of United Church of North India retained such a body, it would not undo the amendments to the memorandum of association of UCNITA. Since the questions which have been raised in these two petitions pertained to properties of UCNITA, what has to be seen is whether the petitioners could have a say in dealing with the affairs of UCNITA. In these petitions, the only question to be considered is whether the Charity Commissioner was justified in passing the impugned order on 18-4-2001.

15. As rightly submitted by his learned adversary, the standing accorded to the Scheduled Tribes association by a Full Bench of High Court of Andhra Pradesh was based on the acknowledgment that a public interest was at stake. The learned counsel for the respondents

submitted that if the petitioners wanted to espouse a public interest, they could have filed the petition as a public interest litigation, which is then dealt with by a Division Bench of this Court. He further submitted that in running any institution, the ideas of persons at the helm of affairs of such institution would obviously carry some importance. He submitted that if every layman, or to use his own expression "every good Christian" were to make suggestions about managing the affairs of the respondent UCNITA, it will be impossible to manage the affairs. He submitted that no public interest was at stake and petitioner Shri Stephen Barse and his proxies in the other petition were attempting to settle personal scores by putting spokes in the developmental activities, because they were held to have no say in running the affairs of UCNITA. He pointed out that the learned Charity Commissioner had referred to the judgments of this Court and change reports and held that the petitioners had no locus. It is clear that the petitions are not public interest litigation and the petitioners are not espousing any public cause. They were, therefore, rightly held by the Charity Commissioner to have no locus.

16. The learned counsel for the respondent submitted that it would be necessary to find out whether the management had acted in

the interest of the Trust while seeking permission from the Charity Commissioner rather than go by the objections of a disgruntled few, who are out of the management of the institution.

17. As to securing interests of the Trust, the learned Senior Counsel for the petitioners relied on the judgment of this Division Bench of this Court in Mr. A.R. Khan Construwell & Co. v. Youth Education & Welfare Society & Ors., reported in 2005(4) ALL MR 564. The Charity Commissioner had granted permission to develop property of the Trust. The Trust had sought permission and submitted proposal after inviting tenders. A writ petition filed against the order of the Charity Commissioner was dismissed and hence a letters patent appeal was preferred by the appellants, who had not fulfilled only one condition of eligibility in the tender document about having requisite turn over. The learned Senior Counsel submitted that this Court had observed that the principle of locus standi had been expanded and any party who wanted to give offers in the interest of a Trust could not be restrained from participating in the proceedings before the Charity Commissioner or later on contesting the decision of the Charity Commissioner. I have carefully considered this judgment. It may be seen that even the said letters patent appeal was eventually

dismissed as the interests of the Trust were not held to have been ditched. Though the appellants, unsuccessful bidders, had been allowed to challenge the order passed by the Charity Commissioner, the judgment cannot be an authority for the proposition that the persons in the position of the present petitioners, who, unlike the appellants in the reported decision are not unsuccessful bidders, would have a standing to challenge the order of the Charity Commissioner.

18. Apart from the question of standing, the learned Charity Commissioner has dealt with the objections of the petitioners and has found them to be without substance. The learned Senior Counsel for the petitioners submitted that this finding of the Charity Commissioner was not correct and the Charity Commissioner had overlooked the requirements of fulfillment of objects of the Trust. He submitted that the Gardiner High School property was entrusted by Rev. Gardiner for running the School. A copy of the trust-deed was produced for my perusal. He submitted that the development would defeat the objects of the Trust. Similar objection was raised in respect of the property of St. Ursula Girls High School and it was submitted that creation of a commercial or residential complex in the School premises would affect

the activities of the Girl School and would pose danger to the modesty, safety and security of the girl students.

19. The learned Senior Counsel relied on a judgment of the Supreme Court in Mehrwan Homi Irani and another v. Charity Commissioner, Bombay and others, reported in (2001) 5 SCC 305. In that case, a Trust had been created for providing a sanatorium. The Trust had 13 acres of land, out of which the trustees proposed to lease out 12 acres of land leaving only 1 acre for being used for sanatorium. In this context, the Supreme Court remitted the matter for a fresh decision by the Charity Commissioner after fresh proposals were considered by the trustees after a fresh advertisement inviting proposals was issued. The learned Senior Counsel submitted that even in the present case the proposals need to be considered afresh bearing in mind the necessity to protect the objects of the Trust.

20. His learned adversary, Shri S.P. Dharmadhikari, submitted that the Trust had placed on record the details of the plans of the two projects. He pointed out that the total area earmarked for development in the two projects out of the entire area available was just 19.78% in one case and 15.80% in the second case. He submitted that thus only a fraction of property was being used for development

retaining the entire major portion of the property for the existing activities. He submitted that lease was to be granted only for the super structure and not over land. Money generated was to be used for creating better facilities for the students and, therefore, the proposal does not suffer from any deficiency. On these aspects, the petitioners have not made out any concrete ground, nor could the learned Senior Counsel enlighten as to how the objects of the Trust would be defeated by allowing development only on a small portion of the Trust property, which would generate funds to maintain the remaining property. As for the contentions about reduction of play ground, etc., raised by the learned Senior Counsel for the petitioners in course of arguments, suffice it to say that the plans placed on record do not show that any play ground in any School premises is sought to be reduced by the proposed development. Therefore, it is difficult to find fault with the order passed by the learned Charity Commissioner granting permission to the respondent-Trust to develop the property. The petitioners have thus failed to show that there was any case for interference in the order passed by the Charity Commissioner in exercise of jurisdiction under Articles 226 or 227 of the Constitution.

21. Consequently, both the petitions fail and are dismissed.

JUDGE

PDL/-